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January 28, 2011

Surface Transportation Board
Attn: Docket No. EP 704
395 E Street, S.W.
Washington, DC 20423-0001

Re: Notice of Intent to Participate at Oral Hearing February 24, 2011
Review of Commodity, Boxcar and TOFC/COFC Exemptions, No. EP 704

Greetings:

Enclosed for filing are the original and ten (10) copies of the "Packaging Corporation of America, Verified Statement". A duplicate of this letter and return mail envelope, postage prepaid, is enclosed for your stamped verification of receipt.

PCA requests that its representatives, Dina Calabro and Bruce A. Ridley, joint written testimony enclosed, be afforded five (5) minutes, at the oral hearing February 24, 2011, to address key topics of the testimony, as follows:

- Why have competitive incentives not led to a solution to the boxcar reload problem? Why have the Class Is not taken steps to compete more effectively for single-car, first-mile/last-mile retail freight such as PCA's boxcar and commodity exempt traffic?
- Have Class I consolidations and the Exemptions combined to diminish the role of short lines as catalysts of competition? Is full or partial revocation of the Exemptions a potential means to restore competitiveness?
- Is it reasonable for a rule to correct unreasonable practices that impede competition be limited to non-exempt traffic? Has business-to-business, alternative dispute resolution been more effective for disputes involving regulated traffic than for exempted traffic and, if so, why?

Sincerely,

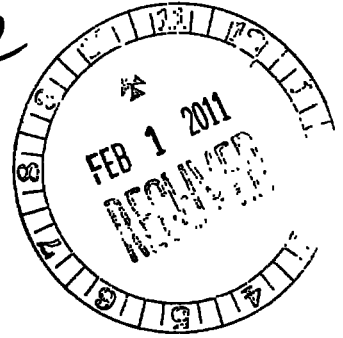
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John Duncan Varda

JDV:mc/mso

Enclosures

228742



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**REVIEW OF COMMODITY, BOXCAR
AND TOFC/COFC EXEMPTIONS**

STB Docket No. EP 704

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PACKAGING CORPORATION OF AMERICA

VERIFIED STATEMENT

John Duncan Varda
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Dated: January 27, 2011

Due: January 31, 2011

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**REVIEW OF COMMODITY, BOXCAR
AND TOFC/COFC EXEMPTIONS**

STB Docket No. EP 704

**PACKAGING CORPORATION OF AMERICA
JOINT VERIFIED STATEMENT**

of

**Dina Calabro, Transportation Manager and
Bruce A. Ridley, Mill Manager, Tomahawk, WI**

IDENTIFICATION AND SCOPE OF STATEMENT

Witnesses Calabro and Ridley.

Dina Calabro is Packaging Corporation of America's ("PCA") corporate Transportation Manager, having broad responsibility for all of PCA's freight transportation. Her office is at PCA's headquarters, 1900 West Field Court, Lake Forest, IL 60045.

Bruce A. Ridley is Mill Manager at PCA's Tomahawk, Wisconsin mill, having broad responsibility for 450 employees, producing and shipping approximately 525,000 tons of containerboard annually. His office is at PCA's Tomahawk, Wisconsin mill at N9090 County Road E, Tomahawk, WI 54487. Mr. Ridley has served, since 2006, as a member of

the Board's Railroad-Shipper Transportation Advisory Council, currently serving as its Vice Chair.

Packaging Corporation of America.

PCA manufactures containerboard (a broad range of linerboard and corrugating medium) at four mills, located at: Tomahawk, Wisconsin; Filer City, Michigan; Counce, Tennessee; and Valdosta, Georgia. PCA converts some eighty percent (80%) of the containerboard manufactured at these four mills at sixty-eight (68) PCA corrugated products plants. At these plants, linerboard is used for inner and outer facing of corrugated products; corrugating medium is fluted and laminated to the linerboard to produce corrugated sheets; and, finally, the sheets are printed, cut, folded and glued into corrugated products familiar to consumers.

PCA's corrugated product plants are strategically located across the United States to meet PCA's customers' needs. Competition is intense. PCA seeks to differentiate its products through pricing, quality, service, design and product innovation.

PCA's four mills produced 2.26 million tons of containerboard (2009) which is shipped in some 20,000 railcar and 45,000 truck loads, producing net sales of approximately \$2.15 billion, annually. The mills produce containerboard from both softwood and hardwood fibers, as well as a mix of fibers recycled from converting operations. Linerboard is produced mainly from softwoods such as pine, predominant near PCA's

southern mills at Counce and Valdosta. Medium is produced mainly from hardwoods, predominant near PCA's northern mills at Tomahawk and Filer City.

PCA mills' finished containerboard is wound into large rolls which are slit to size as required and shipped to the converter plants. In the converting process, as a rule of thumb, linerboard is consumed at twice the rate of medium (*e.g.* two railcars of linerboard for each railcar of medium). There is an increasing demand for wider rolls, shipped on end, resulting in shipping heights of 110 to 130 inches. The larger heights can only be shipped on end (highly desirable for efficient loading, unloading and transit and for damage control) via railcar.

In recent years however, rail boxcar shipments from PCA's four mills have been declining, currently accounting for approximately fifty percent (50%) of tons shipped, well down from historic levels. The decline is not the result of improving competitiveness of trucking. Rather, the decline in rail market share is the result of diminished competitiveness of the railroads – pricing, boxcar supply, boxcar quality, and service (timeliness and predictability or consistency).

Scope of PCA's Comments.

PCA's comments address freight, specifically linerboard and corrugating medium, moving from PCA's four containerboard mills to PCA's sixty-eight (68) corrugated products plants and similar movements

from or to plants of PCA's competitors.¹ Accordingly, the focus of PCA's comments is the exemption of boxcars and of PCA's commodities.

STATEMENT – IN SUMMARY

Why have competitive incentives not led to a solution to the boxcar reload problem? Why have the Class Is not taken steps to compete more effectively for single-car, first-mile/last-mile retail freight such as PCA's boxcar and commodity exempt traffic? Have Class I consolidations and the Exemptions combined to diminish the role of short lines as catalysts of competition? Is full or partial revocation of the Exemptions a potential means to restore competitiveness and provide accountability for representations made in consolidations such as Canadian National's acquisition of control of Wisconsin Central?

Is it reasonable for a rule to correct unreasonable practices that impede competition be limited to non-exempt traffic? Has business-to-business, alternative dispute resolution been more effective for disputes involving regulated traffic than for exempted traffic and, if so, why?

PCA believes these questions deserve the Board's attention, further investigation and answers.

¹ Containerboard is generally considered a commodity-type product and can be purchased from numerous competing suppliers. The containerboard and corrugated products industry is a highly competitive sector of U.S. domestic manufacturing. Frequently, competing suppliers cross-trade containerboard to most efficiently and effectively meet their own or their customers' immediate needs.

STATEMENT

Competition Alone Has Not Resolved Boxcar Under-Utilization which Continues to Impair Effective Rail-Truck Modal Competition.

Often PCA is precluded from immediately reloading a boxcar, in place, following unloading, because the owner of the boxcar deems the destination of the reload not in its proprietary interest. At the same time, railroaders will say that the twelve (12) turns per year they experience on boxcars are too few and that twenty (20) turns per year are needed. PCA's perception is, if truckers managed utilization of their trailer assets at the same level as boxcar assets on the Nation's rail network, their trailer assets and freight volumes, too, would be shrinking.

Though this perception is founded on PCA's observations and merely anecdotal, the questions raised by PCA's observations deserve this Board's attention, further investigation and answers:

- Thirty (30) years after the Staggers Act and more the twenty-five (25) years into the Boxcar Exemption, why have competitive incentives failed to inspire the Nation's rail network to overcome the re-load problem?
- Why have competitive incentives failed to cure under-utilization of its boxcar assets, generally?

- Why have the Class Is failed to take the steps necessary to compete more effectively against trucking for single-car, first-mile/last-mile retail freight such as PCA's boxcar and commodity exempt traffic.

In contrast, during the same period, car types and commodities which were not exempted but remained regulated (grain, for example) appear, through rail carrier and shipper cooperation, to have made significant strides in railcar and related operating asset utilization.

Authority for the voluntary North American Boxcar Pool ("NABP") was established in 1987. Operations, however, did not commence until 2003. NABP has yet to make any perceptible impact on PCA's experience with re-loading and improving utilization of boxcar and related operating assets. NABP was conceived to address this problem:

The concept of the pool is straightforward. Usually freight cars move loaded in one direction, but empty in the reverse. **Boxcars are no exception**, and by sharing each other's assets the railroads save empty miles and operating expenses, allowing them to compete for more traffic.²

[Emphasis added.] In contrast to coal or grain or other specialized railcars, for example, that "boxcars are no exception" is far less ordained by the geography of commodity markets than by institutional barriers within the Class Is or perceptions by individual Class Is of their own immediate proprietary interests.

Are these the reasons that competition alone, fully exempt from regulation by the Board, has failed to resolve the problem? Is the defect in

2 Cite: www.ttx.com/capabilities/fleet-operations/reload-operations.aspx/.

the NABP concept (*i.e.*, the impediment to its implementation) that it is wholly “voluntary”? Would regulation make a difference?

There may be other reasons, perhaps, along the lines suggested by ICC Vice Chair Simmons in the 1986 boxcar exemption decision:

I also wish to express my reasons for not including Class III in the exemption. . . . [C]ommon sense dictates that the small short line carrier is usually far more dependent on the joint-line traffic, and this substantial dependency may weaken its bargaining position to a great extent. I would point out that some of these shippers now served by short line carriers are on branch lines the larger railroads were willing to abandon. **Thus, the Class I railroads were already willing to forego revenues from this traffic, and might do so again absent intervention by this Commission.**

[Emphasis added.]³ Lack of progress in resolving the reload problem may simply be an indication of the consolidated Class Is' increasing willingness “to forego revenues of [join-line boxcar] traffic” or of the Class Is' willingness to forego, or selectively limit, competing head-to-head with trucking on competitive traffic which requires a willingness to compete for both single- and joint-line boxcar traffic.

Class I Consolidation Has Diminished the Role of Short Lines as Catalysts for Competition, Beyond Their Own Lines, Nationwide.

Three of PCA's four mills (Valdosta, Filer City and Tomahawk) are directly served only by Class IIIs. PCA's fourth mill, Counce, is directly served by Kansas City Southern which, in terms of single-line to PCA destinations, is more like a Class II-1/2 than a Class I.

³ *Exemption from Regulation – Box Car Traffic*, Ex Parte No. 346 (Sub No. 8), decided September 5, 1986, 3 I.C.C. 2d 23, 35 (1986).

At the time of the Exemptions, mid-1980s, and even for some years beyond, as the number of Class Is was whittled down through consolidation, short lines, especially those with multiple Class I connections, maintained networks of joint and multi-line through routes and rates. They were important voices in pricing and, in some cases, key providers of railcars. Today, Class Is often refer to many, if not most, of the Nation's 550 short lines, as their "short line partners". They are junior partners at best, more like captives. They are very definitely silent partners when it comes to pricing.

Through the 1990s, the experience at PCA's Tomahawk mill, served by Wisconsin Central,⁴ resisted this trend. Beginning in 1988 and after becoming the Wisconsin Central System in 1992,⁵ until acquisition of control by Canadian National in 2001, Wisconsin Central was the largest Class II, essentially a regional rail carrier. With multiple points of interchange with all of the principal Class Is, at Chicago, Minneapolis-St. Paul, Duluth-Superior, and Sault Ste. Marie, Wisconsin Central played a leading role in pricing for a nationwide network of through routes and rates. In the same period, Wisconsin Central invested in a new and upgraded boxcar fleet to serve paper and forest products. PCA's

4 Prior to acquisition of the Milwaukee Road by Soo Line, the short line serving PCA's Tomahawk, WI mill had direct connections with both Class Is.

5 In 1992, Wisconsin Central acquired control of the Green Bay & Western Railroad and the Fox River Valley Railroad. Shortly thereafter, it acquired control of Algoma Central Railroad and, in 1998, remaining lines of the former Chicago & Northwestern Railroad north of Green Bay which, by then, had been acquired by Union Pacific.

Tomahawk mill enjoyed exceptional equipment and service. Rail market share grew. That trend ended with acquisition of Wisconsin Central by Canadian National in 2001.⁶

Historically, PCA experienced firsthand the significant role once played by short lines in competitive pricing on through routes beyond their own lines, investing in boxcars and providing first and last mile service effectively competing for market share against all-highway trucking. This is no longer the case.

In PCA's opinion, the diminished role of short lines is a result of unintended consequence of a combination of the consolidation of the Class Is and the boxcar and commodity exemptions. Consolidation of the Class Is has brought many benefits to the railroad industry, shippers and the public. Revocation or partial revocation of the boxcar and commodity exemptions, however, may offer a variety of means for restoring the historic, pro-competitive role of short line and regional rail carriers.⁷

6 See, next heading, below, PCA's endorsement and adoption of separate Statement of Wisconsin Central Group, filed in this docket.

7 In the boxcar exemption proceedings, economist favoring and opposing the exemption offered conflicting opinions. *Exemption from Regulation – Box Car Traffic*, *supra*, 3 I C.C. 2d 23, 28-29 (1986). Expert testimony presented by the American Short Line Railroad Association predicted some of the consequences PCA has experienced. Silence or opposition of short lines or their representatives in the present proceeding will only serve to confirm observations of loss of the pro-competitive role of short lines that has been PCA's experience.

PCA Endorses the Statement of the Wisconsin Central Group.

The Wisconsin Central Group is an *ad hoc* rail freight shippers coalition, operating under the auspices (among others) of the Wisconsin Paper Council of which PCA is a member. The Wisconsin Central Group has separately filed a Statement herein. PCA adopts and endorses the Statement of Wisconsin Central Group in this Docket.

Exemptions Have Slowed Pro-Competitive Correction of Industry-Wide Unreasonable Practices – The Fuel Surcharge Example.

Transparency in pricing is a market place fundamental. Within six months of commencing its inquiry into rail industry-wide fuel surcharge practices, the Board determined rate-based fuel surcharges and double dipping to be unreasonable practices. The Board allowed a 90-day period for corrective action.⁸ In doing so, the Board noted:

Moreover, Congress exempted the rail carriers from the consumer protection requirements of the Federal Trade Commission Act, presumably not because Congress intended to permit carriers to mislead their customers, but because our [STB's] authority to proscribe unreasonable practices embraces misrepresentations or misleading conduct by the carriers.

[Footnote omitted; emphasis added.]⁹

The Board chose not to extend its ruling to traffic subject to the boxcar, commodity and other exemptions. PCA's experience is that the railroads have been slow to eliminate rate-based fuel surcharges and double dipping from rates for PCA's boxcar and commodity exempt

⁸ *Rail Fuel Surcharges*, Ex Parte No. 661, decided January 25, 2007, Slip Op. p.9.

⁹ *Id.*, at p. 7.

traffic. In other words, the free market alone has not moved the rail carriers to promptly eliminate such unreasonable practices.

If the Board felt that the railroads' mislabeling of their fuel surcharges and their double dipping was sufficient to find such practices unreasonable and to enter a ruling prohibiting such practices, but the railroads are slow to adapt, there is ample reason for the ruling to extend not only to regulated traffic, but also, to traffic subject to the Exemptions. PCA's reasoning is that consumer protections of this sort are intended to promote, not inhibit, the function of competitive markets.

The Board properly recognized that Congress did not intend that rail carriers be free from such consumer protections but continues to vest that regulatory function in the Board's unreasonable practice jurisdiction. In the context of the intermodal exemption, the Board commented:

The exemptions are based on prior findings that there is a sufficiently competitive market for the transportation involved that regulatory protections are not needed. . . . If we revoke the exemption, even partially, **the railroads would be restricted in how they can respond to changes, while trucking companies would not. This kind of imbalance could have unintended consequences and upset the competitive balance between railroads and trucks.**

Id., at p. 13 (emphasis added). In the case of PCA's boxcar and commodity exempt traffic, however, PCA's experience is that the "market is not sufficiently competitive" to drive out the rail fuel surcharge unreasonable practices. This is a situation in which the railroads, unrestricted by the Board's ruling, have simply not responded. This is a "competitive balance" that needs to be upset.

The fuel surcharge is merely one example of an "unreasonable practice" that has not been driven out of the market by the current competitive balance of rail and trucking but continues as an impediment to the effectiveness of rail competition for PCA boxcar and commodity exempt traffic. Many in the public sector, such as the new chairman of the House Transportation and Infrastructure Committee, Rep. John Mica, R-Fla., believe that changing the "competitive balance between railroads and trucks" is a critical component of the Nation's transportation policy:

"My goal would be to get more trucks off of the highway, and more cars off of the highway," Mica told *The Journal of Commerce*. That would save motor fuel and highway wear and tear at the same time, he said. "Four out of every five dollars for transportation now goes just for maintaining infrastructure," he said. By diverting more traffic to trains and making better use of existing highway corridors, the U.S. would "not only stop sitting on the (highway) asset but stop wrecking the asset."

The Journal of Commerce, 1/17/2011. Rep. Mica's view is not isolated. It has been held by many in the public sector (federal, state and local) for many years.

PCA believes, as the fuel surcharge exemplifies, that the Board should broadly investigate "unreasonable practices" that may be an impediment to more effective competition that would shift freight from highway to rail, whether such unreasonable practices exist despite or because of the Exemptions. PCA submits that the Board will find the focal point for the need for more effective competition to be more effective

single-car, first-mile/last-mile retail railroading, competing for freight such as PCA's boxcar and commodity exempt traffic.

The Exemptions Have Undermined Extension, Industry-Wide, of the Benefits of Business-to-Business and Alternative Dispute Resolution.

The extension to boxcar and commodity exempt traffic of pro-competitive, consumer protection ground rules, such as the rail fuel surcharge unreasonable practice ruling, will not result in a tidal wave of complaints and administrative litigation. The existence of the regulatory rule, together with access to the Board by complaint, will tend to promote business-to-business dispute resolution and agreement on alternatives such as binding arbitration, if mediation and other less formal processes do not work. The result will be pro-competitive. Agreement on alternative dispute resolution processes for the rail grain sector, which has remained regulated, supports this view.

In revisiting the Exemptions, the Board ought not only investigate and consider the potential pro-competitive impacts of the Board's regulatory role, but also, how exercising its role in the proper circumstances and manner may promote efficient and effective business-to-business dispute resolution without need to resort to complaint proceedings before the Board.

CONCLUSION AND REQUESTED ACTION

Today, as a result of Class I consolidations, the boxcar and commodity exemptions appear to sacrifice overall modal competitiveness to proprietary interests of individual Class Is. This development has left shipper and public interests¹⁰ no effective remedy for failure of the rail network to aggressively compete for boxcar freight such as PCA's commodities.

PCA requests that the Board: (a) Conduct an in-depth investigation of the effectiveness of the boxcar and commodity exemptions affecting PCA's freight, changed circumstances and implications of revocation of the Exemptions; and, (b) in regard to circumstances described in Statement of the Wisconsin Central Group, consider the pros and cons of limited and/or targeted revocation of the Exemptions to address failures of competition policy and conditions arising from Class I consolidations such as those illustrated by ten (10) years of Canadian National's control of the Wisconsin Central System.

Dated this 27th day of January, 2011.

[See the next two pages, following, for Verifications.]

¹⁰ Seeking revocation of Board ordered exemptions, realistically requiring broad based shipper and public support, has not been seen as an effective remedy for individual shipper and public entities.

Verification

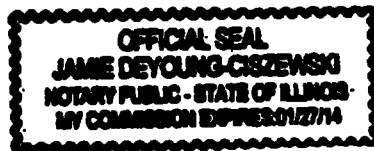
I, Dina Calabro, Packaging Corporation of America's corporate Transportation Manager, affirm and verify that I have read the foregoing Comments and know the facts stated therein to be true and correct to my own knowledge and, as to those stated upon information and belief, I reasonably believe them to be true and correct.

Dina Calabro
Dina Calabro

STATE OF ILLINOIS)
) SS
LAKE COUNTY)

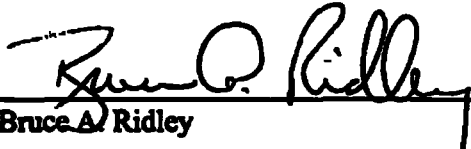
Personally came before me this 27th day of January, 2011, the above named Dina Clabro, personally known to me to be the person who executed the foregoing verification and acknowledged the same.

[Signature]
Notary Public, State of Illinois
My commission 1/27/14



Verification

I, Bruce A. Ridley, Packaging Corporation of America's Mill Manager, for its mill located at Tomahawk, Wisconsin, affirm and verify that I have read the foregoing Comments and know the facts stated therein to be true and correct to my own knowledge and, as to those stated upon information and belief, I reasonably believe them to be true and correct.


Bruce A. Ridley

STATE OF WISCONSIN)
) SS
LINCOLN COUNTY)

Personally came before me this 27 day of January, 2011, the above named Bruce A. Ridley, personally known to me to be the person who executed the foregoing verification and acknowledged the same.


Notary Public, State of Wisconsin

My commission 8-21-2011

